



05-921

No. _____

IN THE
Supreme Court of the United States

ANGELA KING, VALERIE ASKEW, CHARLES J. KAHN,
JANA HUTCHINSON, and SHARON HENDERSON,
Petitioners,

v.

VIVIAN GADSON, UNITED WISCONSIN LIFE INSURANCE
COMPANY, AMERICAN MEDICAL SECURITY, *et al.*,
Respondents.

**On Petition for Writ of Certiorari to the
Alabama Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether a state court in approving a class action settlement, consistent with basic principles of federalism and the Due Process Clause of the Fourteenth Amendment, can exercise jurisdiction over unnamed class members and their claims when: (1) the class representative has no standing to assert claims that are common or typical to members of a class; (2) the named class representative is not a member of the class, is not entitled to any relief proposed in the settlement and could not herself opt-out of the class thus making her inadequate to represent the class; (3) counsel for the class plaintiff and class defendants conspired and colluded to compromise the claims of the real class members; and (4) the class definition was switched after certification without informing the Court and notice of the change was never mailed to any member of the subject class?

II. Whether a state court in a multi-state class action, consistent with the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Article IV, Section 1 of the Constitution, can ignore the substantive law of another state whose citizens are included in the class when the transactions giving rise to the nonresidents' claims occurred in the non-forum state where the forum state has no connection and where it is expressly shown that the law governing the claims of the nonresidents is substantially different than the law of the forum state?



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STATEMENT OF JURISDICTION

The Alabama Supreme Court's affirmance without opinion of the Trial Court's certification of this class action lawsuit conflicts with precedent from this Court, precedent of the United States Court of Appeals, the precedents of the court below, precedents handed down by other state courts of last resort and the strict statutory and regulatory rules that govern the business of insurance. Jurisdiction is therefore appropriate pursuant to Rule 10(b) of the Court's Rules.

The decision sought to be reviewed here is the August 12, 2005 Alabama Supreme Court's decision to affirm the trial court's Orders of September 29, 2004 and/or November 10, 2004. A petition for rehearing was denied on October 21, 2005. This petition is therefore timely submitted.

STATEMENT OF THE CASE

This Petition for Writ of Certiorari grows out of the Alabama Supreme Court's failure to affirm in writing how the trial court's multi-state class certification order satisfies due process concerns. This Court should grant Certiorari in this matter so that each and every state court in the country will clearly understand and follow the Due Process considerations of unnamed class members in a class action.

Given the allegations made in challenging the trial court's approval of a multi-state settlement class—where the named Plaintiff did not even have standing to represent the class—the trial court's certification and the Alabama Supreme Court's affirmance without opinion so far depart from the accepted and usual course of judicial proceedings, that it calls for an exercise of this Court's supervisory power.

Certiorari in this case will confirm to the Alabama Supreme Court, and all state courts, that the Due Process Clause and the Full Faith and Credit Clause considerations must be applied as safeguards for the rights of unnamed class members in any multi-state class action case.

STATEMENT OF FACTS PERTINENT TO THE ISSUES PRESENTED

This is a case involving the sale and marketing of comprehensive major medical health insurance policies known as "MedOne" plans. This insurance product was sold and marketed as "group" health insurance. MedOne coverage is underwritten by United Wisconsin Life Insurance Company ("UWLIC"). American Medical Security, Inc., ("AMS") provides administrative services for UWLIC which allows AMS to market, underwrite, bill, collect, pay claims, and perform other services for the AB 2000 policy. UWLIC and AMS sold their "group" health insurance through a discretionary trust with AmSouth Bank serving as the trustee. The name of the discretionary trust was the "Prescription for Good Health Trust". As trustee, AmSouth Bank held the master policy of insurance through which certificates of insurance were issued to the "employee/certificate-holder" that was covered by the health benefits made the basis of each certificate. The certificate holder was also the person who applied for the insurance coverage. The persons who were insured under each respective certificate were (i) the certificate holder and (ii) any dependent that was eligible for coverage. Once an insured person received a certificate of insurance, they were a covered person under the plan. At each renewal period (one calendar year from issuance), the certificate holder would receive a premium renewal notice reflecting the premium amount that must be paid in order to keep the coverage in force. While these plans were marketed as "group" coverage, the Defendants' renewal rating practices revealed that the Defendants considered individual factors such as a certificate-holder's/insured's claims experience and health status in calculating that insured's renewal premium, rather than considering the claims experience of the entire "group" of which each certificate holder was a member. The premium increase assigned to any given certificate holder depended upon the malady suffered by that individual insured person.

This practice of "tier rating" led to exorbitant premium increases to insureds that were forced to pay these charges in order to keep their health insurance in force.

On June 11, 2002, Plaintiff Vivian Gadson filed her initial complaint in the Circuit Court of Montgomery County, Alabama. Ms. Gadson brought this claim in her individual capacity against Defendants American Medical Security, Inc., United Wisconsin Life Insurance Company, Amsouth Bank, and Gerry Reynolds, alleging fraudulent representation, fraudulent suppression, wanton conduct including the failure to properly hire, train, and supervise agent Reynolds, unjust enrichment, unfair business practices, and conspiracy. On July 9, 2002 and again on several occasions thereafter, Plaintiff amended her complaint to include class action allegations wherein Ms. Gadson ultimately sought to represent a nationwide class of persons consisting of insured persons on similar common law theories as those alleged in her original lawsuit. Plaintiff submitted in her first amended complaint and throughout her numerous amendments that followed there were "questions of law or fact common to the class, including . . . whether the Defendants were engaged in 'Tier' underwriting and/or whether Defendants engaged in re-underwriting based upon an insured's health and claims history." Likewise, Gadson alleged that her claims as class representative were "typical of those of the class members in that she was subjected to the same unlawful treatment and [that Gadson] suffered the same type of harm as suffered by other members of the class."

Throughout the original complaint and all four amendments that followed, Ms. Gadson alleged that she was an insured under the AB 2000 policy and that her health and claim history were used to determine the amount of premium charged at renewal. Gadson filed her action on a MedOne policy wherein she alleged that her insurance coverage was provided under master policy AB 2000, Client No. 2400-

006178. Gadson further alleged that the Defendants were underwriting her policy on an annual basis "based upon her health and claim history and that [Vivian Gadson's] health and claim history were the main factors used to determine the amount of premium charged"

On September 27, 2002, Defendants filed a Motion to Dismiss Gadson's suit, because, among other reasons, *Gadson was never sold a policy of insurance by the Defendants*. The Certificate of Insurance issued in the instant case was actually issued to Jevon Gadson, Ms. Gadson's adult son.¹ Jevon Gadson, not Vivian Gadson, was the certificate holder or covered person under the Certificate of Group Insurance upon which Vivian Gadson based her claims. Neither the Certificate of Group Insurance nor the Master Policy Certification submitted by AMS ever mention Vivian Gadson as an "employer," "employee," "certificate holder," or an "insured" under the policy.

On March 11, 2004, Gadson and AMS submitted a Stipulation of Settlement and Compromise to the Trial Court. On April 6, 2004, the Trial Court accepted the Stipulation of Settlement and set a Fairness Hearing to take place on September 8, 2004. Without conducting any evidentiary hearing, the Trial Court, on April 6, 2004, preliminarily certified this class action as consisting of the following class:

"All persons and entities . . . in Alabama or Georgia who, at any time purchased or renewed in Alabama or Georgia a certificate of medical insurance from United Wisconsin Life Insurance Company."

Pursuant to the April 6, 2004, Order from the Trial Court, Notice was sent to the members of the purported class

¹ There is no evidence that Jevon Gadson is a minor or otherwise incompetent. In fact, upon information, Jevon Gadson's date of birth is May 1, 1976 which would make him twenty-five years old as of the date the original complaint was filed.